

TRADE MARKS ORDINANCE (Cap. 559)

APPLICATION NO. : 302110643

MARKS : (a) **KACO**
(b) **Kaco**
(c) **kaco**

APPLICANT : KACO GMBH + CO. KG

CLASS : 17

STATEMENT OF REASONS FOR DECISION

Background

1. On 12 December 2011, KACO GMBH + CO. KG (“the applicant”) filed an application for registration (“the subject application”) of the three marks in series as shown below (“the subject marks”) under the Trade Marks Ordinance (Cap.559) (“the Ordinance”).

(a) **KACO**
(b) **Kaco**
(c) **kaco**

2. Registration of the subject marks was sought in respect of “sealing materials, packing materials, insulating materials; sealing gaskets, sealing elements; moulded rubber, included in this class (class 17)” in Class 17 (“the applied-for goods”).

3. At the examination stage, an objection was raised against the subject application under section 12(2) of the Ordinance on the basis of the following registered mark (“the cited mark”):

Cited Mark

Trade mark : **KACO**
Registration no. : 301872702
Date of registration : 29 March 2011
Specification : Class 17
不屬別類的橡膠、古塔波膠、樹膠、石棉、雲母以及由這些原材料的製品，生產用半成品塑料製品，包裝、填充和絕緣用材料，非金屬軟喉管。

4. Despite submissions made on behalf of the applicant, the objection was maintained by the Registrar. The applicant requested a hearing on the registrability of the subject marks. The hearing took place before me on 4 November 2014, at which Mr. Tristan Chan of China Patent Agent (H.K.) Ltd. appeared on behalf of the applicant. I reserved my decision at the end of the hearing.
5. In support of the subject application, the applicant had filed the following statutory declarations made by Mr. Markus Schwerdtfeger, who is the General Manager of the applicant, with a view to establishing that there has been an honest concurrent use of the subject marks and the cited mark for the purpose of section 13(1) of the Ordinance:
 - (a) Statutory Declaration Mr. Markus Schwerdtfeger dated 4 December 2012 (“Schwerdtfeger Declaration”); and
 - (b) Statutory Declaration Mr. Markus Schwerdtfeger dated 15 July 2013 (“Schwerdtfeger Supplemental Declaration”)(Collectively, the “Declarations”).

Decision

The Ordinance

6. The objection is raised under section 12(2) of the Ordinance, which reads as follows:

“(2) A trade mark shall not be registered if-

- (a) the trade mark is identical to an earlier trade mark;*
- (b) the goods or services for which the application for registration is made are similar to those for which the earlier trade mark is protected; and*
- (c) the use of the trade mark in relation to those goods or services is likely to cause confusion on the part of the public.”*

7. An “earlier trade mark”, as referred to in section 12(2), is defined in section 5 of the Ordinance, and the relevant part of the section reads as follows:

“(1) In this Ordinance, “earlier trade mark”, in relation to another trade mark, means –

- (a) a registered trade mark which has a date of the application for registration earlier than that of the other trade mark, taking into account the priorities claimed in respect of each trade mark, if any...”*

The date of application for registration of the cited mark is earlier than that of the subject marks. The cited mark therefore constitutes an “earlier trade mark” in relation to the subject marks for the purpose of section 5 of the Ordinance.

8. Another relevant section is section 7(1) of the Ordinance which throws light on how subsection (c) of section 12(2) is to be interpreted. Section 7(1) provides that:

“For greater certainty, in determining for the purposes of this Ordinance whether the use of a trade mark is likely to cause confusion on the part of the public, the Registrar or the court may take into account all factors relevant in the circumstances, including whether the use is likely to be associated with an earlier trade mark.”

9. The provisions on honest concurrent use are set out in section 13 of the Ordinance, which states that:

“(1) Nothing in section 12 (relative grounds for refusal of registration) prevents the registration of a trade mark where the Registrar or the court is satisfied-

(a) that there has been an honest concurrent use of the trade mark and the earlier trade mark or other earlier right; or

(b) that by reason of other special circumstances it is proper for the trade mark to be registered.

(2) The registration of a trade mark under or by virtue of subsection (1) shall be subject to such limitations and conditions as the Registrar or the court thinks fit to impose.”

Section 12(2) of the Ordinance

10. Section 12(2) of the Ordinance essentially precludes a mark from registration if the use of it is likely to cause confusion on the part of the public, as a result of it being identical to an earlier trade mark and that it is sought to be registered in respect of the goods or services that are similar to those registered under the earlier trade mark. I must therefore consider whether there is identity between the subject marks and the cited mark and similarity between the goods covered by the respective marks which would lead to a likelihood of confusion.

11. The basic principles regarding the assessment of similarity between marks and the likelihood of confusion between them are set out in the cases of *Sabel BV v Puma AG* [1998] R.P.C. 199, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.* (the “Canon” case) [1999] R.P.C. 117, *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV* [2000] F.S.R. 77, *Specsavers International Healthcare Ltd v Asda Stores Ltd* [2012] F.S.R. 19 and adopted by the Court of Appeal in *Tsit Wing (Hong Kong) Company Limited and Others v TWG Tea Company Pte Ltd* (CACV 191/2013) at paragraph 35. These principles are:

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors.

(b) The matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well

informed and reasonably observant and circumspect, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question.

- (c) The average consumer normally perceives a mark as a whole and does not proceed to analyse its various details.
- (d) The visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements.
- (e) Nevertheless, the overall impression conveyed to the public by a composite trade mark may, in certain circumstances, be dominated by one or more of its components.
- (f) And beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark.
- (g) A lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa.
- (h) There is a greater likelihood of confusion where the earlier trade mark has a highly distinctive character, either per se or because of the use that has been made of it.
- (i) Mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient.
- (j) The reputation of a mark does not give grounds for presuming a

likelihood of confusion simply because of a likelihood of association in the strict sense.

(k) If the association between the marks causes the public to wrongly believe that the respective goods [or services] come from the same or economically-linked undertakings, there is a likelihood of confusion.

12. In accordance with the above principles, I need to examine firstly whether there is identity between the subject marks and the cited mark and secondly, similarities between the goods covered by the respective marks and then consider whether such similarities (if any) would be likely to lead to confusion by the public.

Comparison of marks

13. A comparison of the marks has to be based on an overall appreciation of the visual, aural and conceptual similarities of them, taking into account the overall impressions given by them, and bearing in mind, in particular, their distinctive and dominant components.
14. In comparing the marks, I shall consider the perception of the marks in the mind of the average consumer of the applied-for goods. The applied-for goods are sealing, packing and insulating materials, sealing gaskets, sealing elements and moulded rubber in Class 17. These are seals or sealing materials put into and used in machines and engines and for use in the automotive industry, as well as consumer products made of rubber. These goods can vary in scale and complexity, be used for different purposes and be selected by both members of the public and the people in trade. The relevant consumers therefore include both members of the general public as well as people in the trade in Hong Kong. These relevant consumers are deemed to be reasonably well-informed, observant and circumspect.
15. Moreover, I have to take into consideration the subject marks and the cited mark in their normal and fair use in relation to the applied-for goods, and the overall impression each of them would give to the relevant consumers of the applied-for goods.

16. The subject marks are pure word marks, each of which comprises the English letters “KACO” for Mark A, “Kaco” for Mark B and “kaco” for Mark C in plain font. There is no stylisation, additional device or decoration. The word “KACO” does not have a particular dictionary meaning either. It is apparent that Mark A and the cited mark are identical. Given the notional and fair use of the subject marks, Mark B and Mark C are also considered identical to the cited mark. In consequence, each of the subject marks is identical to the cited mark and this point has not been disputed by the applicant.

Comparison of goods

17. In assessing the similarity of the goods concerned, the following factors set out by Mr. Justice Jacob (as he then was) in *British Sugar v James Robertson and Sons Ltd* [1996] RPC 281 (at pages 296-7) should be taken into account:
- (a) The respective uses of the respective goods or services;
 - (b) The respective users of the respective goods or services;
 - (c) The physical nature of the goods or acts of services;
 - (d) The respective trade channels through which the goods or services reach the market;
 - (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves; and
 - (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.
18. It was also held in the *Canon* case, *supra* that in assessing the similarity of the goods or services in question, all the relevant factors relating to those goods or services themselves, including but not limited to their nature, their end users, their method of use and whether they are in competition with each other or are complementary, should be taken into account (at paragraph 23).

19. Also, it is stated in *Meric v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (T-133/05) that goods can be considered as identical when the goods designated by the trade mark application are included in a more general category designated by the earlier mark, or vice versa (at paragraph 29).
20. In light of the principles stated above, I find that “sealing materials, packing materials, insulating materials; sealing gaskets, sealing elements” in the subject application are identical to “填充、包裝和絕緣用材料” registered by the cited mark.
21. For “moulded rubber, included in this class” in the subject application, it is a natural or synthetic rubber which has been heated and mixed into a mould cavity until it cools and hardens into a finished product and can be used for diversified applications. I therefore find it highly similar to “不屬別類的橡膠、古塔波膠、樹膠” covered by the registration of the cited mark as the latter may consist of both natural and synthetic rubber.
22. Taking into account all relevant factors, I find that the applied-for goods are identical or highly similar to the goods protected by the cited mark.

Likelihood of confusion

23. Under section 12(2) of the Ordinance, likelihood of confusion refers to confusion on the part of the public as to the trade origin of the goods or services in question. This is a matter of global appreciation taking into account all relevant factors and judging through the eyes of the average consumer of the goods at issue.
24. As stated above, the relevant consumers of the applied-for goods include members of the general public as well as people in the trade. It should also be noted that the average consumer rarely has the chance to make a direct comparison between the different marks but must rely upon his imperfect recollection of marks.
25. I have already found that the subject marks and the cited mark are identical and the applied-for goods and the cited goods are identical or highly similar. In

assessing the likelihood of confusion, I have to be mindful of the principle established in the case of *Canon*, supra, that a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods or services, and vice versa. Bearing in mind that the subject marks and the cited mark are identical and given that consumers only have the imperfect recollection to rely on, there is a real likelihood of confusion of the origin of the applied-for goods if the subject marks are allowed to co-exist with the cited mark on the register.

26. Having regard to the identity between the subject marks and the cited mark, and the identity or similarity between the applied-for goods and the goods as protected by the cited mark, and bearing in mind the principles set out in paragraph 11 above and taking into account all relevant factors, I consider that when the subject marks are used on the applied-for goods, the average consumer, whether members of the general public or people in the trade, would be confused into believing that the goods under the subject marks and the goods as protected by the cited mark come from the same or economically-linked undertakings. In the premises, the registration of the subject marks is objectionable under section 12(2) of the Ordinance.

Section 13(1) of the Ordinance

27. I now proceed to consider whether the subject marks can nonetheless be accepted for registration by virtue of honest concurrent use under section 13 of the Ordinance. The relevant provision under section 13 reads as follows:-

“(1) Nothing in section 12 (relative grounds for refusal of registration) prevents the registration of a trade mark where the Registrar or the court is satisfied –

- (a) that there has been an honest concurrent use of the trade mark and the earlier trade mark or other earlier right; or*
- (b) that by reason of other special circumstances it is proper for the trade mark to be registered.”*

Section 13(1)(a) of the Ordinance

28. As stated in *Re CSS Jewellery Co. Ltd.* [2010] 2 HKLRD 890 at paragraph 35, the assessment of honest concurrent use under section 13(1)(a) of the Ordinance involves the following two-stage determination:

- (1) whether there has been an honest concurrent use of the subject marks and the cited mark;
- (2) if the answer to (1) is in the affirmative, whether after considering all relevant circumstances, including public interest, the Registrar's discretion should be exercised to accept the application for registration of the subject marks, despite the fact that the use of the subject marks in relation to the applied-for goods is likely to cause confusion on the part of the public.

29. The Declarations filed in support of honest concurrent use include 3 exhibits, the contents of which are summarised as follows:

Schwerdtfeger Declaration

- Exhibit 1 – Copies of delivery note and packing list to one Kodah Leung Company Hong Kong dated 13 April 2005
Copies of delivery notes, packing lists, confirmation orders and certificates of various dates sent to other companies in Mainland China
- Exhibit 2 – Copies of International Registration records of other marks of the applicant

Schwerdtfeger Supplemental Declaration

- Exhibit 1 – Copies of commercial invoices and delivery note to one Kodah Leung Company Hong Kong from 2000 to 2005 and 2007
Copies of undated prospectuses of Sabo-Group
Copies of a catalogue on RADIA oil seals' size list of 1998 ("RADIA® Size List")
A list of deliveries for the applicant's products from 1996 to 2008

(“List of Deliveries”)

Copies of International Registrations of other marks of the applicant including English translation

Copy website content of the applicant’s Hong Kong website of 2011

30. Before I examine the Declarations and the exhibits in details, I note that the Schwerdtfeger Declaration was not made in Hong Kong and under the execution clause therein, a seal, which is not legible, has been affixed but it is unclear to me as to who or in what capacity such person notarised the Declaration. Pursuant to rule 80(1)(b) of the Trade Marks Rules (Cap. 559A)(“the Rules”), a statutory declaration may be made and subscribed in any place outside Hong Kong before any court, judge, justice of the peace, notary, notary public, consul or other person authorised by law to administer an oath or to exercise notarial functions in that place for the purpose of any legal proceeding. As the seal affixed on the Declaration is not legible, I cannot ascertain whether the Declaration was notarised by any of the authorities named above and hence I am not satisfied that the requirement under rule 80 of the Rules has been met.
31. Besides, there is attached to the Schwerdtfeger Declaration and each of the exhibits to the Declaration a page with contents which are in a language other than English. Besides, certain documents under Exhibits 1 and 2 to the Schwerdtfeger Declaration are not in English either, and no corresponding English translation has been provided. Pursuant to rule 120 of the Rules, if any document or part of the document is not in Chinese or English, such document shall be accompanied by a translation of the document or that part of the document and the translation has to be verified to the satisfaction of the Registrar as corresponding to the original text. Given that there is no English translation, the requirement under rule 120 of the Rules is not met.
32. Despite the non-compliance with the formalities under the Rules as mentioned above, for the purpose of the this decision, I am prepared to go through the Schwerdtfeger Declaration as well as the exhibits thereto as if all the formalities for filing of the evidence have been duly observed. I shall consider whether there has been an honest concurrent use of the subject marks at the date of filing of the subject application, i.e. 12 December 2011, based on the assumption that

the Schwerdtfeger Declaration and the exhibits thereto have complied with all the formality requirements of the Rules.

33. The point of time for assessing honest concurrent use in the current case is the date of application (i.e. 12 December 2011). What I have to consider is therefore whether the applicant has established that there has been honest concurrent use of the subject marks and the cited mark as at the date of application.

Stage 1

34. To pass the first stage stated in *Re CSS Jewellery Co. Ltd.*, the applicant needs to establish three matters, namely, (a) there had been use of the subject marks in respect of the applied-for goods in Hong Kong; (b) such use had been made concurrently with the cited mark; and (c) such concurrent use had been honestly made.
35. First of all, it is noted that the 3rd to 15th pages of Exhibit 1 to the Schwerdtfeger Declaration contain copies of packing lists, delivery notes, confirmation orders and certificates addressed to various companies in Mainland China and not companies in Hong Kong. These exhibits are irrelevant in ascertaining the status of use of the subject marks in Hong Kong as at the date of application. On the other hand, although the 1st -2nd pages of the same Exhibit 1 contain a set of delivery note and packing list sent to Kodah Leung Company in Hong Kong, the contents were not in English and were not accompanied by English translation. As regards Exhibit 2 to the Schwerdtfeger Declaration and the 54th to 67th pages of Exhibit 1 to the Schwerdtfeger Supplemental Declaration, they contain details of the three International Registrations of the applicant which are composite marks and are different from the subject marks. Besides, such registrations do not prove use of those composite marks, let alone use of the subject marks, in Hong Kong. As such, they are of little value to the subject application for the purpose of establishing a case of honest concurrent use. Little assistance is also offered by the Sabo-Group prospectuses (16th – 39th pages of Exhibit 1 to the Schwerdtfeger Supplemental Declaration) which are undated and the extent of circulation in Hong Kong is unknown.

36. In the Schwerdtfeger Declaration, Mr. Schwerdtfeger claimed that the mark “KACO” had been used worldwide by the applicant since 1950 and the date of first use of such mark in Hong Kong as applied to the goods in question was in 2007 (paragraph 7). In the Schwerdtfeger Supplemental Declaration, however, Mr. Schwerdtfeger clarified that the date of first use of such mark in Hong Kong as applied to the goods in question was in fact in 1996 (paragraph 6). However, from the evidence filed, I note that the subject marks appear as part of the name of the supplier (or a component of the marks used by the supplier) of the applied-for goods and I will explain my reasons below.

37. In the copies of commercial invoices and delivery note sent to one Kodah Leung Company HK from 2000 to 2005 and 2007 (pages 1-15, Exhibit 1 to the Schwerdtfeger Supplemental Declaration), I note that the company name “KACO GmbH + Co. KG”, printed in very small words on the top corner of those documents, was placed below a much larger composite mark



comprising a large circular device with the small word “KACO” underneath. The products sold were denoted in certain product codes in those documents, with the words “Piston and Rod Seals”, “RADIA Oil Seals” and “Repair Set” marked in manuscript next to the codes. In addition, the word “RADIA” was in fact marketed by the applicant as the trade mark of its sealing materials as shown in the catalogue on RADIA® Size List (pages 40-48, Exhibit 1 to Schwerdtfeger Supplemental Declaration). Together with the use of the sign “®”, it indicates that “RADIA” was a registered trade mark and various products on offer were categorised as “RADIA® Oil Seals” (pages 46-48 of the above Exhibit). In my view, the applicant has put considerable emphasis on the word “RADIA” as its registered mark and has made efforts to educate the relevant consumers to identify the applicant’s goods with the word “RADIA”. Hence, the evidence suggests that the mark “RADIA” was used by the applicant as a trade mark in respect of sealing materials. It enables consumers to directly distinguish the applicant’s sealing materials from those of other undertakings and the word “KACO” would merely be seen as the name or a component of the logo of the supplier of RADIA oil seals.

38. Apart from the registered mark “RADIA”, I should point out that different marks

had been used by the applicant since 2000 in its prospectuses as well as the catalogue on RADIA® Size List (pages 16-48, Exhibit 1 to the Schwerdtfeger Supplemental Declaration). The marks include, for instance, “Sabo-Group”, “SABO-KACO”, “RADIA®”, “SABO”, “TH”, “WOL”, the sign “TKK” inscribed in a circle, the registered mark “AXIA®”, as well as several composite



marks, including , and . For the composite marks, if the relevant consumers in Hong Kong have come across the relevant materials, it is my view that the marks will mainly be remembered and referred to by the consumers as “KACO Sabo Group”, “KACO Sabo Gruppe”, or even “SABO KACO”. As such, the consumers have not been educated of the function of the subject marks as a source identifier through the use of such composite marks.

39. That said, even if I accept that the subject marks have been used on the sample commercial invoices and packing list as referred to in paragraph 37, I note from the List of Deliveries (pages 49-53, Exhibit 1 to the Schwerdtfeger Supplemental Declaration) that the applicant’s goods, contents of which were not identified in the said List, were only delivered to three companies in Hong Kong. In other words, it may be the case that only the three companies who dealt with the applicant directly may, to a certain extent, identify the word “KACO” as the name of the applicant. As for the rest of the consumers, who purchased the applied-for goods through other sales channels, for instance through the three companies above, they would remember and refer to the applicant’s goods by the mark of “RADIA”, and that it is uncertain if they are aware of the name or logo of the supplier of such materials. I am therefore not satisfied that the subject marks have attained such use in Hong Kong to the extent that consumers had been educated of the function of the subject marks as a source identifier in respect of the applied-for goods.

40. More importantly, as regards the sales volume of the applied-for goods, the products were again denoted by product codes in the List of Deliveries and there was no information as to what those products were and whether the figures

related to the applied-for goods at all. I am therefore unable to ascertain the amount of sales of the applied-for goods.

41. On the other hand, in respect of promotion of the subject marks, there is nothing to show that there was promotion of the subject marks in respect of the applied-for goods in Hong Kong, or that such promotion, if any, had reached the relevant consumers of the applied-for goods in Hong Kong. First of all, the applicant has not provided any advertising figures spent on the applied-for goods. For the catalogue on RADIA® Size List, I was not given any information as to its extent of circulation in Hong Kong, if at all. In view of the lack of information before me as to the scale and extent of the promotional activities relating to the subject marks, I am unable to see how much effort, if any, the applicant has paid or put in in advertising the subject marks with respect to the applied-for goods in Hong Kong.
42. Besides, whilst the applicant indicated that the subject marks were featured on its website in 2011 (pages 68-70 of Exhibit 1 to the Schwerdtfeger Supplemental Declaration), the copy of the photo taken from the relevant website was of such poor quality that it features nothing but a black rectangle and the subject marks could hardly be discerned from the photo. Such evidence does not support the use of the subject marks in respect of the applied-for goods.
43. During the hearing, Mr. Chan submitted to me some documents, for instance, copies of commercial invoices, delivery notes and order confirmations sent to one Kodah Leung Company in Hong Kong from 2000 to 2005 and 2007. However, as mentioned to Mr. Chan in the hearing, since the materials submitted were not filed by way of a statutory declaration or an affidavit in accordance with rule 79 of the Trade Marks Rules (Cap. 559A), I am unable to treat them as formal evidence filed in support of the subject application. Besides, those documents appear to be the duplicates of some of the documents in Exhibit 1 to the Schwerdtfeger Supplemental Declaration. Mr. Chan acknowledged that the documents submitted were for reference only as he had not received instructions to file supplemental declaration from the applicant. That said, even if they had been properly filed as evidence, based on the above analysis, they do not assist in showing that the relevant consumers had been educated that the subject marks were used by the applicant as an indicator of trade origin.

44. From the above, it appears that the exhibits only show a very limited use of the subject marks as component(s) of the name or logo of the supplier of sealing materials to a small group of consumers, and the majority of the consumers would more readily recognise the registered mark “RADIA” as the trade mark identifying the applicant’s sealing materials. On this basis, I will now go on to consider whether such use of the subject marks had been made concurrently with the cited mark.
45. As mentioned above, the sample commercial invoices and packing list were from 2000 to 2005 and 2007 only. Even assuming that the List of Deliveries (referred to in paragraphs 39 and 40) were in relation to the applied-for goods, the figures for market value were up to 2007 only. In short, no information at all was provided by the applicant as regards the volume of sales of the applied-for goods under the subject marks from 2008 up to the date of application (i.e. 12 December 2011). As stated above, the point of reference for assessing honest concurrent use in the current case is the date of the subject application (i.e. 12 December 2011); as I am unable to ascertain whether there has been use of the subject marks and if so the extent of such use for a few years prior to the date of the subject application (from about 2008 to December 2011), the evidence adduced fails to establish that there was concurrent use of the subject marks with the cited mark in relation to the applied-for goods.
46. Following the analysis above, I therefore do not need to go further to consider the question of whether the use of the subject marks had been honestly made.
47. On the totality of the evidence before me, the answer in stage 1 of the assessment must therefore be in the negative and it is not necessary for me to proceed to stage 2 of the assessment. The claim for honest concurrent use must fail under section 13(1)(a) of the Ordinance.

Section 13(1)(b) of the Ordinance

48. Pursuant to section 13(1)(b) of the Ordinance, registration of a trade mark should not be prevented under section 12 of the Ordinance if, by reason of other special circumstances, it is proper for the trade mark to be registered.

49. On the evidence before me, I do not see any special circumstances which would warrant registration of the subject marks in respect of the applied-for goods. Accordingly, I do not allow the subject marks to be registered in accordance with section 13(1)(b) of the Ordinance.

Conclusion

50. I have considered all the oral and written submissions made by the applicant in respect of the application. For the reasons stated above, the subject marks are therefore precluded from registration under section 12(2) of the Ordinance. The application is accordingly refused under section 42(4)(b) of the Ordinance.

Karine Lai
for Registrar of Trade Marks
13 February 2015